

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6  
7 GAWKER MEDIA, LLC, Case No. 16-11700-smb

8  
9 Debtor.

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13 U.S. Bankruptcy Court  
14 One Bowling Green  
15 New York, New York 10004

16  
17 November 30, 2017  
18 10:24 AM

19  
20 B E F O R E :  
21 HON STUART M. BERNSTEIN  
22 U.S. BANKRUPTCY JUDGE  
23  
24  
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Hearing re: Notice of Presentment, Notice of Presentment of  
Order Pursuant to Rule 2004 of the Federal Rules of  
Bankruptcy Procedure Authorizing the Plan Administrator to  
Conduct Discovery Concerning Potential Causes of Action and  
to Establish Discovery Response and Dispute Procedures

Transcribed by: Dawn South

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P R O C E E D I N G S

MR. GALARDI: Good morning, Your Honor.

THE COURT: Good morning.

MR. GALARDI: For the record, Greg Galardi on  
behalf of the plan administrator for Gawker Media, LLC.

Your Honor, there's only one matter on the agenda  
today, is and that is the debtor's -- what's left is the  
debtor's notice of presentment of a form of order.

Depending upon how Your Honor would like to  
proceed, we have submitted an order and we've received two  
objections.

The first objection goes to the actual substance  
of the order itself with a blackline that they've submitted,  
I can run through that.

The second objection is the objection of  
Mr. Thiel, and Mr. Thiel accompanied that with a motion for  
reargument and then also requesting the direction that no  
order be entered.

THE COURT: Okay.

MR. GALARDI: We think that is procedurally  
improper, willing to address the Court on the comments to  
the order and why we think those are appropriate.

THE COURT: Let me hear why I shouldn't enter any  
order, because that's a threshold issue.

MR. GALARDI: Why you shouldn't enter any order.

1 You should enter an order today.

2 THE COURT: He's saying I shouldn't enter any  
3 order, right?

4 MR. GALARDI: And -- that's correct. So you'll  
5 want to hear from Mr. Clark --

6 THE COURT: Well yeah, I'll hear from him. That's  
7 a --

8 MR. GALARDI: Thank you.

9 THE COURT: -- threshold issue.

10 MR. CLARK: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. CLARK: Tony Clark of Arps, Skadden for Peter  
13 Thiel and Thiel Capital.

14 Your Honor, at the hearing on the motion some  
15 months back you asked Mr. Galardi what facts he needed in  
16 order to frame a complaint, that was at page 7 of the motion  
17 hearing transcript. And then in the decision that Your  
18 Honor rendered on the 2004 motion at page 10 Your Honor  
19 indicated that without the information that the debtors were  
20 seeking on a Rule 2004 motion they lacked a reasonable basis  
21 to believe they can prove such a claim, a claim against  
22 Thiel.

23 THE COURT: I think the argument that was made was  
24 that they're not entitled to the discovery because they lack  
25 a basis to believe that they have a claim, and I suggested

1 it worked the other way, that they needed discovery in order  
2 to assert the claim. They don't have to assert a prima  
3 facie claim in order to get the discovery.

4 MR. CLARK: And that's what I was getting to, Your  
5 Honor.

6 Based on the administrator's most recent comments  
7 to the press, and we've attached some of that to our papers  
8 here, he has everything he needs to frame a complaint and to  
9 file a complaint. And in fact Mr. Galardi admitted exactly  
10 that at the hearing on the motion at page 10 where he stated  
11 that -- this is a quote -- "Given the facts and given what  
12 Your Honor has noticed clearly we could sign a complaint."

13 So the Rule 2004 discovery isn't necessary to  
14 enable them to file a complaint --

15 THE COURT: But all this was true before I  
16 rendered the decision, so nothing has changed.

17 MR. CLARK: I think it was a mishap --  
18 respectfully -- a misapprehension of the facts, Your Honor,  
19 because while it may be that they don't have evidence to  
20 prove a claim at the end of the day, they've got whatever  
21 they need, as Mr. Galardi said, to file a complaint. So  
22 they ought to go ahead, if they think they've got a claim,  
23 file their complaint, and then the normal --

24 THE COURT: So shouldn't you have made that motion  
25 within 14 days with a memorandum decision?

1 MR. CLARK: I don't think so, Your Honor.

2 THE COURT: That's what the rules require.

3 MR. CLARK: Simply because there was no order  
4 entered, that was what we were waiting on.

5 THE COURT: Doesn't the rule refer to the  
6 disposition? It doesn't say the order, 9023-1 does it?

7 MR. CLARK: If --

8 THE COURT: I don't have it in front of me.

9 MR. CLARK: I don't have the rule in front of me  
10 either.

11 THE COURT: But if I rendered a decision, even if  
12 there was no order in it and you thought that it should be  
13 reargued, didn't you have to make that motion within 14  
14 days? I thought your motion was something new has occurred.

15 MR. CLARK: Something --

16 THE COURT: Like a motion for renewal under state  
17 practice.

18 MR. CLARK: That is correct, something new has  
19 occurred, which is this sale process.

20 I would observe as a procedural matter, Your  
21 Honor, that by going -- by asking for reconsideration  
22 without a written motion, without following the time limits  
23 in the rules, we were simply following Galardi on civil  
24 procedure.

25 THE COURT: But, you know, you don't even get

1 argument on a motion for reconsideration either, you just --  
2 you make the motion, they file a response, and I read it,  
3 and you only get argument if I think I'm going to grant  
4 reargument. First I have to grant reargument and then you  
5 get to reargue it. That's what the rule says.

6 MR. CLARK: Well the basis for the application,  
7 Your Honor, was a change in circumstances. We had been told  
8 that the rule -- the reason for the Rule 2004 application  
9 was --

10 THE COURT: Okay. So tell me about the change in  
11 circumstances.

12 MR. CLARK: The change in circumstances, Your  
13 Honor, is with respect to what -- the sale process that's  
14 now going on.

15 The administrator has indicated that the  
16 information now would be helpful to them to value their  
17 claims in connection with an effort to sell those claims in  
18 an ongoing process, but the administrator already knows what  
19 his alleged damages are, and the information he seeks  
20 doesn't go to damages, it really goes to -- or the value of  
21 the claim, it goes to the liability on the claims or the  
22 strength of the claims against Thiel.

23 So while that information might inform Gawker as a  
24 seller on the relative strength or weakness of any potential  
25 claims, it can't be disclosed to any of the bidders, and the

1 bidders can't use that information and they're not --  
2 because they're not entitled to any prelitigation discovery  
3 under Rule 2004.

4 Those claims now are patently being auctioned,  
5 albeit in something of a secret star chamber kind of  
6 process, but based on what the administrator has been saying  
7 in the press and his -- what he has said in his reply, it  
8 sounds like whatever proposal for these claims may be  
9 generated by what they refer to as the confidential portion  
10 of the sale process, that's at page 13 of their reply. The  
11 price for those claims is going to be determined "on the  
12 open market." That's what they said in their reply at  
13 page 8.

14 So presumably that means that there'll be some  
15 kind of a stalking horse bid or proposal that will be  
16 subject to higher and better offers either from Mr. Thiel or  
17 from other interested bidders.

18 So the way I look at this, Your Honor -- and the  
19 administrator has also indicated that the process is  
20 expected to take a matter of a few weeks, in the not too  
21 distant future to conclude.

22 So it seems to me that under these changed  
23 circumstances it would make sense to hold off the Rule 2004  
24 discovery, avoid the expense and the time consuming  
25 proceedings on that discover, just hold that in abeyance for

1 a few weeks while we see what happens in this sale process  
2 as it proceeds. Because if the claims at the end of the day  
3 are sold to the highest and best bidder then there would be  
4 no need or basis for any Rule 2004 discovery and no need to  
5 waste estate assets on that --

6 THE COURT: There isn't a -- is there still an  
7 estate? Didn't all the property vest -- revest in the  
8 debtor?

9 MR. CLARK: There'd be no need to waste the  
10 liquidating debtor assets that are being held for  
11 distribution under the plan.

12 THE COURT: I thought that the -- putting aside  
13 possible objections to claims, that the only creditor --  
14 unpaid creditor was Mr. Bollea, because --

15 MR. CLARK: That's correct.

16 THE COURT: -- he's got an interest in litigation  
17 recovery.

18 MR. CLARK: That's correct. He's -- although  
19 there's a technical name they have for the creditor, I  
20 forget if it's a trust or whatever, the only beneficiary on  
21 the creditor's side, as I understand it, is Mr. Bollea to  
22 the tune of 45 percent of any recoveries. That's correct.

23 And in the sale process, Your Honor -- look, we  
24 weren't looking for an order from the Court, we were  
25 actually hoping more no direction from the Court to the

1 administrator.

2 THE COURT: Can I ask you a question? Does the  
3 Court even have to approve this sale?

4 MR. GALARDI: Your Honor, we actually don't think  
5 the Court necessarily has to approve the sale, but Your  
6 Honor did retain jurisdiction over the sale process pursuant  
7 to the order, and frankly --

8 THE COURT: But this is a separate sale though  
9 isn't it?

10 MR. GALARDI: It is a separate sale that we  
11 specifically referenced in the plan --

12 THE COURT: All right.

13 MR. GALARDI: -- and I think they've put in  
14 footnote 20, 21, they noted the jurisdictional issue.

15 And frankly given what's gone on and with  
16 Mr. Bollea we were anticipating coming back to the Court,  
17 and if Your Honor doesn't believe you have jurisdiction  
18 under the plan that's not the case, but --

19 THE COURT: I haven't looked, you know, just  
20 normally if an --

21 MR. GALARDI: Correct.

22 THE COURT: --entity emerges from bankruptcy it  
23 goes on with its business, it doesn't come back to  
24 bankruptcy court.

25 MR. GALARDI: Correct. And then the only issue

1 here was because of the nature of the parties, the nature of  
2 Mr. Bollea's interest, and because we anticipated potential  
3 issues we did put a specific paragraph into the retention of  
4 jurisdiction section to -- and again, it's only as good as  
5 Your Honor ultimately determines -- but the jurisdictional  
6 issue.

7 THE COURT: All right. I stand corrected.

8 Mr. Clark, the time to move for reargument runs from the  
9 date of the court order. So it's premature, it's not ripe.

10 MR. CLARK: Somebody just handed me a note to that  
11 effect.

12 THE COURT: All right. It's premature. It's  
13 not ripe.

14 MR. GALARDI: I think that's what he was referring  
15 to is the Galardi --

16 MR. CLARK: No. But I was actually referring to  
17 Galardi on civil procedure -- bankruptcy procedure at the  
18 July 7th hearing -- July 7th, 2016 hearing on their bid  
19 procedures motion for the sale of substantially all assets.  
20 Your Honor actually heard all the evidence and you ruled  
21 from the bench that they hadn't met their burden of proof to  
22 get those procedures approved, so you said that's my  
23 conclusion, and Mr. Galardi asked for a break, and he got  
24 ten minutes and came back in and then he had the -- there's  
25 a quote -- he had the privilege of making another motion for

1 reconsideration at that time. It was an oral motion on no  
2 notice to anybody.

3 So look --

4 THE COURT: So what'd I do with that motion?

5 MR. CLARK: You granted it.

6 MR. GALARDI: No, he denied it the first time.

7 MR. CLARK: No. No. Before the transcript ended  
8 Your Honor had approved their bidding procedures. So you  
9 actually granted the reconsideration.

10 Look, we can hold this all in abeyance for another  
11 few weeks, we can put a formal motion on the table. I think  
12 it really -- Your Honor understands the issues that are  
13 presented by --

14 THE COURT: I think what you're really asking for  
15 is a stay of discovery. You haven't quite said that, but  
16 that's really what it is.

17 MR. CLARK: It makes sense, Your Honor. It makes  
18 sense.

19 THE COURT: But you haven't asked for it.

20 MR. CLARK: We request a stay of discovery at this  
21 time.

22 THE COURT: Is this an oral motion you're making?

23 (Laughter)

24 MR. CLARK: It is. It is.

25 THE COURT: This must be the Gawker rules of

1 procedure. I don't know.

2 (Laughter)

3 MR. CLARK: It's bankruptcy court, rules don't  
4 apply, right, Your Honor?

5 THE COURT: Well --

6 MR. CLARK: At least somebody told me that.

7 THE COURT: -- having heard you for a couple years  
8 I -- no, I won't say it.

9 (Laughter)

10 MR. CLARK: But, Your Honor, it just makes sense  
11 given what they've decided to do, which is to auction off  
12 these claims, to go through the process, see what happens,  
13 and if at the end of the day there's a buyer for these  
14 claims then there is no party who is entitled to seek or  
15 obtain Rule 2004 discovery, and there's no point in us  
16 spending time and money and going through that process. It  
17 would be premature at this point.

18 THE COURT: Okay. Let me hear you on the motion  
19 to stay discovery, which is what this really is all about.

20 MR. GALARDI: Your Honor, first let's take two  
21 things.

22 One, this is not an opportunity to reargue the  
23 2004, so we can --

24 THE COURT: I agree with you, it's a motion --

25 MR. GALARDI: As to our motion to --

1 THE COURT: Tell me why discovery shouldn't be  
2 stayed. That's basically what he's arguing.

3 MR. GALARDI: Well the discovery shouldn't be  
4 stayed, Your Honor, because one, the discovery -- just  
5 because -- and if you read the article carefully it said  
6 that the plan administrator was considering selling those  
7 claims. That is not the same thing as actually filing a  
8 motion to do those claims, it is not saying that the plan  
9 administrator is not going to litigate those claims, bring  
10 those claims, settle those claims.

11 So exactly the reasons that were prevalent and  
12 Your Honor granted for cause are exactly the reasons why we  
13 need to have the order.

14 Second, there is a confidentiality provision in  
15 this particular 2004 order that specifically addresses we  
16 cannot share the discovery.

17 So to Mr. Clark's point that it's premature let us  
18 get a bid, one, somebody may want to bid but the plan  
19 administrator still has to know, it's preparing to settle,  
20 pursuing, or bringing the claims how to value those claims.  
21 So it's not with the intention to give it to the bidder.

22 So there's no basis to stay the discovery that  
23 Your Honor has already ordered is appropriate for cause.

24 THE COURT: Okay. Thank you.

25 I'm going to deny your application for a stay.

1 Your motion for reargument is premature first of all, but in  
2 any event if you're talking about something that occurred or  
3 was in existence prior to the time that I entered the order,  
4 you know, I doubt that I'm going to grant the motion.

5 But putting that aside, the plan administrator  
6 hasn't sold this claim, he still owns it, he's entitled to  
7 take discovery on it, and the only question then is whether  
8 the proposed order accurately reflects the disposition of  
9 the motion, which is all that the proposed order is supposed  
10 to do, not additional relief, not taking away relief, and  
11 then we can deal with reargument, although as long as he  
12 hasn't sold this claim, that he might sell it I don't see  
13 his basis to stay discovery, you know, once an order is  
14 entered you can have conversations about does it make sense  
15 to go through with this or -- but --

16 MR. CLARK: If at some point --

17 THE COURT: -- that's an issue of negotiation  
18 between the two of you at this point.

19 MR. CLARK: At some point, Your Honor, if they  
20 follow through on the process that they have announced and  
21 been talking about in the press those claims may well be  
22 sold, then at that point we may well come back and ask for  
23 further relief if Mr. Galardi and Mr. Holden --

24 THE COURT: Well he can't sell rights under Rule  
25 2004 to take discovery.

1 MR. CLARK: Clearly. Very good. I understand,  
2 Your Honor.

3 THE COURT: All right.

4 MR. CLARK: Thank you.

5 THE COURT: All right. So let's talk about the  
6 order and whether or not it actively reflects the  
7 disposition of the motion.

8 MR. GALARDI: Very well. And, Your Honor, perhaps  
9 I'm thinking about it I would go to their proposed  
10 blackline --

11 THE COURT: Yes.

12 MR. GALARDI: -- and say why the debtors would be  
13 opposed to the changes they've made and try to give our  
14 reasons for that.

15 THE COURT: Okay.

16 MR. GALARDI: I have that as Exhibit 4 to their  
17 motion, if I'm correct. Their objection, I'm sorry.

18 The first change that they strike is the first  
19 sentence, which says, "The motion is granted in part and  
20 denied in part." We took that right off of the caption.  
21 I'm not sure I understand why they've stricken it.

22 THE COURT: I strike that half the time.

23 MR. GALARDI: Fine. I can live with that one.

24 THE COURT: All right.

25 MR. GALARDI: I can live with that one.

1 Now second, Your Honor, is they -- the second  
2 change is in what I'll now call their new paragraph 1, and  
3 they've stricken the language "including, without  
4 limitation, the prima facie tort."

5 Your Honor, we came to Your Honor with respect to  
6 causes of action. The specific lead-in to your own decision  
7 says including.

8 THE COURT: I wasn't limiting the discovery to a  
9 prima facie tort claim. It's the -- for lack of a phrase --  
10 the general circumstances surrounding what is alleged to be  
11 a conspiracy between or among Bollea, Harder, and Thiel to  
12 put the debtor out of business through these lawsuits.  
13 That's what --

14 MR. GALARDI: So now I think --

15 THE COURT: -- the transaction is.

16 MR. GALARDI: So I think now --

17 THE COURT: What I will -- let me save some time.  
18 What I will strike is a reference to affiliates. I don't  
19 know who they are.

20 MR. CLARK: Fine, Your Honor. That's fine.

21 THE COURT: I don't think --

22 MR. GALARDI: Your Honor, that's on the next --

23 THE COURT: I don't think on paragraph 1 we  
24 need --

25 MR. GALARDI: I do want to explain it --

1 THE COURT: -- to say -- let me just finish. I've  
2 been through all this already.

3 I don't think you need in paragraph 1 -- and I'm  
4 speaking to Mr. Clark now -- this reference that you can't  
5 take any discovery from anyone regarding Terry Bollea,  
6 Ayyadurai, and Terrill. It may be true, but it's -- you  
7 know , it's whatever the settlement agreements say you can't  
8 do you can't do.

9 MR. CLARK: And, Your Honor --

10 THE COURT: You can say the limitations and  
11 settlement agreements are incorporated by reference.

12 MR. GALARDI: Well and that's why we did it in  
13 paragraph 4 --

14 THE COURT: In other words less is more, because  
15 that's why we get into these disputes.

16 MR. GALARDI: And, Your Honor, can I just  
17 highlight one word that is absolutely critical, because I  
18 know that it'll come up again, we'll serve the discovery  
19 request.

20 THE COURT: Yes.

21 MR. GALARDI: The word obtain versus seek. The  
22 settlement agreements -- and this is why we wanted to stick  
23 to the language -- we cannot seek such discovery. It's some  
24 -- and I'm going to give you the example that we've talked  
25 about all the time, because this is going to become an issue

1 -- either Mr. Won (ph), who Your Honor is familiar with, and  
2 I say -- or I go to Mr. Hargis (ph) and I say give me all  
3 the documents with Won -- and again, I'm going to make up an  
4 email that I would love to find, doubt that I'll find it --  
5 it says, ah, Mr. Won, we represent Terry Bollea on behalf of  
6 Mr. Thiel and he's financed Mr. Bollea, and he would be  
7 really -- want to finance your litigation to help to destroy  
8 Gawker. My view is that that's an email that we should be  
9 able to get. They can redact all the stuff about Bollea  
10 that they want. I think their view is I don't get that  
11 email because that would be obtaining discovery.

12 THE COURT: What does the settlement say?

13 MR. GALARDI: It says I cannot seek.

14 THE COURT: All right.

15 MR. GALARDI: That's why we are very particular  
16 about the words. And I'm -- look, we have to do the  
17 document requests, they're going to come back, but I wanted  
18 Your Honor to understand --

19 THE COURT: Okay.

20 MR. GALARDI: -- our sensitivity to that.

21 We have no objection -- and we can -- to putting  
22 in the language they originally had, "Nothing in this order  
23 allows us to obtain discovery that the settlement agreements  
24 do not allow us to obtain."

25 THE COURT: Obtain or seek?

1 MR. GALARDI: Seek. To seek. I'm sorry, you're  
2 right, Your Honor, seek. And that's exactly what we tried  
3 to go in paragraph 4, because we had gone back and forth so  
4 much about that language.

5 THE COURT: So what's wrong with that language,  
6 Mr. Clark? Just say he can't seek discovery that you can't  
7 seek under the settlement agreements.

8 MR. CLARK: Right, and I understood what the  
9 Court's comments in the past have been, these are issues  
10 that we're going to have to work out and meet and confer  
11 after they've served up their discovery, and we'll fight it  
12 out there.

13 THE COURT: I would prefer to just say that they  
14 can't seek discovery that they're precluded from seeking  
15 under the settlement agreements, which are incorporated by  
16 reference.

17 MR. GALARDI: That --

18 MR. CLARK: Which is fine.

19 THE COURT: All right.

20 MR. GALARDI: That's fine, Your Honor, we can work  
21 on that -- those words.

22 THE COURT: Two doesn't really seem to be anything  
23 material.

24 MR. GALARDI: Your Honor, the only issue there  
25 again, and they're going to put us through our paces and run

1 the expense --

2 THE COURT: Oh, I see, without obtaining a further  
3 court order --

4 MR. GALARDI: But --

5 THE COURT: Let's stop. What I'm -- I'm not  
6 authorizing any discovery of Ayyadurai -- any 2004 discovery  
7 of Ayyadurai or --

8 MR. GALARDI: Terrill.

9 THE COURT: -- Terrill in this order. Nothing  
10 precludes you from coming back and seeking another order or  
11 if you're involved in litigation simply taking discovery  
12 through the ordinary litigation process, which wouldn't --  
13 presumably wouldn't involve me.

14 MR. GALARDI: And, Your Honor, we have a  
15 disagreement, but that's fine. What we were simply going to  
16 say, and I don't think --

17 THE COURT: Okay. All you have to say is nothing  
18 in this order authorizes or permits discovery of Terrill or  
19 Ayyadurai without prejudice to seek discovery under  
20 appropriate circumstances or pursuant to appropriate  
21 application.

22 MR. GALARDI: Your Honor --

23 THE COURT: Because as I say, he may not need an  
24 application if there's litigation and there are witnesses.

25 MR. GALARDI: And, Your Honor, if you look at

1 paragraph 2, the very first sentence, that's exactly what we  
2 thought, and we can add the words or pursuant to this order.

3 MR. KOHN: May I be heard, Your Honor?

4 THE COURT: Well I get the -- yeah. Who do you  
5 represent?

6 MR. KOHN: I represent Charles Harder.

7 THE COURT: Okay.

8 MR. KOHN: And --

9 THE COURT: Well just give your appearance for the  
10 court reporter.

11 MR. KOHN: Your Honor, Samuel Kohn of Norton Rose  
12 Fulbright on behalf of Charles Harder and the Harder Law  
13 Firm.

14 Your Honor, we just want to be clear, just want to  
15 clarify something Your Honor said. If Your Honor's ruling  
16 is that nothing in this order mentions any possible  
17 discovery other than pursuant to a motion then we're okay.

18 THE COURT: They may not have to make a motion.

19 MR. KOHN: And litigation. But --

20 THE COURT: Look, I don't want to have to think  
21 all the different ways that they might or might not be able  
22 to get discovery in the future.

23 All it has to say is that this order does not  
24 authorize discovery I guess from or it's already  
25 incorporated by reference, the settlement agreement, doesn't

1 authorize them to take a deposition of Ayyadurai or Terrill  
2 without prejudice to whatever rights they may have regarding  
3 future discovery.

4 MR. KOHN: Okay, fine.

5 THE COURT: And just leave it at that.

6 MR. KOHN: That's fine. But the words pursuant to  
7 the settlement agreements is what we found offensive,  
8 because that means it was a back door to be able to do it  
9 pursuant to this order, that pursuant to --

10 THE COURT: I just said they can't --

11 MR. KOHN: Okay. Okay.

12 THE COURT: And I said in the decision they're not  
13 -- they did not seek that discovery in the 2004 order.

14 MR. KOHN: Okay.

15 THE COURT: And this order should reflect the  
16 disposition in accordance with the corrected memorandum.

17 MR. KOHN: Great. Thanks.

18 THE COURT: Okay. What's next?

19 MR. GALARDI: We'll be back on that for a number  
20 of reasons, Your Honor.

21 THE COURT: We're taking out the reference to  
22 affiliates. I don't know what that means.

23 MR. GALARDI: That's fine. That's fine. We can  
24 take out both references to affiliates.

25 The change in the further part of paragraph 4 is

1 just an additional change, so it's not -- that can be  
2 corrected through the document.

3 Four you've already said that we should just  
4 modify it simply to the settlement agreements.

5 THE COURT: You have that in the first sentence in  
6 paragraph 2, right?

7 MR. GALARDI: I believe that's correct, and that's  
8 where we thought but we put it in two should do it.

9 Your Honor, with respect to -- and I know this  
10 seems small -- the next one is the meet and confer about a  
11 privilege log. Your Honor --

12 THE COURT: Got to file a privilege log. If you  
13 think it's too onerous come back and tell me why.

14 MR. KOHN: Why shouldn't we be able to -- Your  
15 Honor mentioned it in the decision and on the transcript  
16 that if there's an issue we should meet and confer --

17 THE COURT: Well you also have to meet and confer  
18 if you have a discovery dispute, and I use that procedure in  
19 Rule 2004 (indiscernible) also, but you have to have -- know  
20 what you're meeting and conferring about. You don't meet  
21 and confer about an obligation to give a privilege log  
22 anymore than you would meet and confer about an obligation  
23 to respond to a document request. You have to do it.

24 MR. KOHN: Yeah, I appreciate that, Your Honor,  
25 and I agree with that. However, we're talking about the

1 Harder Law Firm --

2 THE COURT: Uh-huh.

3 MR. KOHN: -- and we're talking about discovery  
4 requests that will likely implicate all his records --

5 THE COURT: First of all --

6 MR. KOHN: -- and --

7 THE COURT: -- they're interested in conversations  
8 -- primarily interested in conversations between Harder and  
9 Thiel. Thiel is not a client so you don't have an  
10 attorney/client issue there and you presumably have a waiver  
11 of the work product if it were an issue.

12 MR. KOHN: Yeah. So if they would ask -- if their  
13 subpoena would say all non-privileged documents we can go  
14 home.

15 THE COURT: But then who decides whether they're  
16 privileged or not?

17 MR. KOHN: Well the question is you're talking  
18 about (indiscernible) would now, if you're talking about a  
19 non-party, non-client then it's not privileged, right?

20 THE COURT: Well just because you have an  
21 communication with a client doesn't mean it's privileged  
22 either you know.

23 MR. KOHN: And so how would that relate to the --  
24 if you have a conversation --

25 THE COURT: You see you're asking me -- and this

1 is part of my frustration -- you're asking me to think of  
2 all the possibilities in the future as to why a particular  
3 communication, which may or may not have taken place, would  
4 or would not be privileged. And doesn't it make more sense  
5 if you're the party asserting the privilege to identify the  
6 document, the to, the from, and the general substance  
7 without giving away any privilege?

8 MR. KOHN: Okay.

9 THE COURT: If there's a dispute after that then  
10 I'll look at it and you don't provide me with a narrative,  
11 you know, a declaration which allows me to decide that  
12 without looking at the document then I look at the documents  
13 in camera. I do it all the time.

14 MR. KOHN: I understand that, but Your Honor  
15 prefaced this by going back to the law firm's records and  
16 identifying documents.

17 THE COURT: That's right.

18 MR. KOHN: That process is what we want to meet  
19 and confer about, to be able to tailor that instead of all  
20 the records in the office --

21 THE COURT: Right.

22 MR. KOHN: -- because in every law firm there are  
23 millions of documents.

24 THE COURT: If you're talking about word searches  
25 or search terms for emails or something like that you can

1 talk about it. And if there's a dispute -- a specific  
2 dispute, not a speculative or hypothetical dispute, you can  
3 come back here and you can say that, you know, if I have to  
4 do what he wants me to do it's going to take five people a  
5 year to do and that's just disproportionate to the issues.  
6 But again, this is all hypothetical at this point.

7 MR. KOHN: So, you know, but all we really wanted  
8 in that paragraph was to say that we'll meet and confer by  
9 45 days and then thereafter --

10 THE COURT: I think he's bothered with the amount  
11 of time.

12 MR. KOHN: Well we don't have to wait the 75 days  
13 to have a met and confer about privilege logs. We just  
14 wanted the order --

15 THE COURT: Why don't you just -- you can meet and  
16 confer during the period with which you have to respond,  
17 let's say it's 30 days, to either respond or reject, which  
18 would be the normal period, you know, for discovery. And if  
19 it looks like you can't resolve it in the meet and confer  
20 you just write a letter to the Court and then you come here  
21 and hopefully --

22 MR. KOHN: Without a formal objection to the  
23 subpoena?

24 THE COURT: Well you can file an objection --

25 MR. KOHN: That's the thing, the order says we

1 must. We must. And they struck, and I don't know why they  
2 struck --

3 THE COURT: But you do have to provide a privilege  
4 log. We're talking about two different things. We're  
5 talking about a search, but you're saying you got to go back  
6 and look at your documents, and that's an issue of how you  
7 tailor the search terms.

8 MR. KOHN: Right.

9 THE COURT: But you can start talking about it as  
10 soon as you see the document request.

11 MR. KOHN: So what Your Honor --

12 THE COURT: then you go through your search and  
13 you come up with the documents and those are the privileged  
14 documents, presumably.

15 MR. KOHN: Right. So what Your Honor is really  
16 saying is what we tried to put in paragraph 12, which  
17 Mr. Galardi doesn't like, and that's on the last page,  
18 relief from any requirements from this order may be sought  
19 for cause.

20 MR. GALARDI: And we also had relief from the  
21 following deadlines on the seven, Your Honor.

22 MR. KOHN: But what we wanted to make sure is that  
23 nothing was set in stone and just do what the judge just  
24 said.

25 MR. GALARDI: Again, Your Honor, we have no

1 objections with that.

2 MR. KOHN: That we would come back if there's a  
3 problem.

4 THE COURT: Well you can always come back if  
5 there's a problem.

6 MR. KOHN: Right. Fine. That's what we just  
7 wanted to make clear, that it shouldn't be set in stone,  
8 that's all.

9 MR. GALARDI: And, Your Honor, just for --

10 THE COURT: Well if you're going to come back to  
11 me and say I don't have to file a privilege log, although  
12 I'm asserting a privilege as to documents, I can save you  
13 that trip right now, because nobody knows -- your idea of  
14 privilege may be different from his idea of privilege and my  
15 idea of privilege. There has to be some method to identify  
16 the universe of documents without disclosing the information  
17 in the first instance because it may be privileged, and  
18 that's what we're really talking about, and you do it  
19 through a privilege log. And if necessary the documents are  
20 reviewed in camera.

21 MR. KOHN: Or we're just trying to see whether --

22 THE COURT: I don't understand what your problem  
23 is.

24 MR. KOHN: What?

25 THE COURT: I really don't.

1 MR. KOHN: Okay.

2 THE COURT: You're telling me you shouldn't have  
3 to file a privilege log.

4 MR. KOHN: No, I'm not saying that. All I'm  
5 saying is that the order should -- instead of the order  
6 setting a specific deadline for which we have to come back  
7 and we have relief is that the order, just like there was a  
8 mechanism in the order for the protective order, there was a  
9 meet and confer process, there should be a meet and confer  
10 process about the privilege log. That's all.

11 THE COURT: Well but there's a meet and confer  
12 process built in, at least a civil discovery, and as I've  
13 said I follow the same process. There's always a meet and  
14 confer process for a discovery dispute. His concern is that  
15 you're just going to drag this thing out. That's the  
16 primary concern, and there's also a concern that if you  
17 don't identify the documents I don't know what you're  
18 withholding.

19 MR. KOHN: Right. So but in the order there was a  
20 meet and -- as Your Honor said there was a meet and confer  
21 process, but in the protective order there's a specific  
22 paragraph here about the protective order, "In the event  
23 agreement cannot be reached the parties may consent to  
24 respective forms of order and confidentiality order to the  
25 Court pending court approval," blah, blah, blah." So

1 there's a --

2 THE COURT: What do the federal rules say that you  
3 have to respond within 30 days?

4 MR. GALARDI: Correct.

5 THE COURT: So just track the language of the  
6 federal rules.

7 MR. GALARDI: And, Your Honor, with respect to 7  
8 without the changes it says they have to serve objections  
9 within 14 days, which they've not objected to.

10 THE COURT: All right.

11 MR. GALARDI: A complete production within 60  
12 days. We had that they serve a privilege log even after  
13 that 75 days. We have no objection with number 12 which  
14 says that they can get relief. I'm not sure what more they  
15 need.

16 MR. KOHN: I'm sorry, number 12?

17 MR. GALARDI: The new assertion of 12 in their  
18 order. We have the deadlines could be moved under 7 --

19 THE COURT: You know, this is why this is just a  
20 waste of time. You can always --

21 MR. GALARDI: Right.

22 THE COURT: -- seek relief from an order under  
23 Rule 60 or Rule 59, depending on the time. So I don't know  
24 why you need that. For example, Mr. Clark says, well if  
25 they sell the asset they no longer need the information, and

1 that would presumably be a basis to, you know, change  
2 circumstances to seek relief from the order. But you don't  
3 need that in an order and you're not going to -- you know --

4 MR. KOHN: We are trying to avoid costs of coming  
5 back here.

6 THE COURT: But if you make that motion it's still  
7 going to be judged against the traditional standards.

8 MR. KOHN: So if Your Honor said that we have the  
9 ability to meet and confer during that time, that's fine, if  
10 it's not explicit it's not explicit, but I just didn't want  
11 Mr. Galardi to say there's nothing in the order that says  
12 that we have to meet about this privilege log, just produce  
13 it and that's it.

14 THE COURT: If he says that and you write me a  
15 letter saying you want to talk to him about it and he says  
16 no I'm going to tell him to talk to you.

17 MR. KOHN: Okay, good. Thank you.

18 MR. GALARDI: Your Honor, nine may seem silly, but  
19 again, he just got up and was -- you asked him about Terrill  
20 and Ayyadurai, and we're frankly perplexed.

21 We understand Mr. Harder has represented Terrill  
22 and Ayyadurai. We have wanted to ask Terrill and Ayyadurai  
23 for the specific documents that they said we could get from  
24 them.

25 THE COURT: Well but that's not in this order.

1 MR. GALARDI: I understand it's not in this order.  
2 All this says is though the plan -- and this is all it says,  
3 is if we're going to give notice to 2004 subpoenas to the  
4 settlement parties, Alaya (ph), and Mr. Daybeck (ph) is not  
5 involved in here because we always know where he is, Terrill  
6 and Ayyadurai, we just said counsel --

7 THE COURT: He has a conflict with them.

8 MR. GALARDI: I understand that. To counsel to  
9 the settlement parties, right? We were thinking give it to  
10 Charles Harder. They strike that and now they put and/or  
11 counsel, as applicable. Again, we can't even figure out --  
12 and I asked Mr. Harder --

13 THE COURT: Whose change was that?

14 MR. KOHN: That was my change, Your Honor.

15 THE COURT: All right.

16 MR. KOHN: And this is really silly because --

17 THE COURT: A lot of what I've heard is silly.

18 MR. KOHN: You know, this is really silly, because  
19 Mr. Harder does not represent -- Ayyadurai and Terrill did  
20 not engage Mr. Harder with respect to this order or with  
21 respect to anything related to this discovery.

22 THE COURT: Do you --

23 MR. KOHN: So I don't know who they're going to --

24 THE COURT: -- so is the issue you?

25 MR. KOHN: What?

1 THE COURT: Is the issue you?

2 MR. KOHN: No, the issue is this. The issue is  
3 this. When all we're saying, all this change was, that if  
4 Mr. Ayyadurai and Terrill is not -- that is not represented  
5 by Mr. Harder or by any counsel it should go directly to  
6 them. Mr. Bollea could go to counsel, but Terrill and  
7 Ayyadurai didn't engage anybody. Now we're having more  
8 costs, who knows. They didn't engage. They weren't  
9 represented by Mr. Basalio (ph), they were -- during the  
10 case, they were represented by Simpson Thatcher and they  
11 were part of the committee. I don't know who they're going  
12 to engage or if they're going to have counsel the all.

13 MR. GALARDI: Your Honor --

14 MR. KOHN: That's all. That's --

15 (Simultaneous speaking)

16 MR. GALARDI: -- if -- with that explanation I am  
17 fine, but Mr. Harder represented them on the specific  
18 agreement.

19 THE COURT: Well he doesn't represent them though  
20 for the purposes of this --

21 MR. GALARDI: Well but he just got up and tried to  
22 make all the arguments for Terrill and Ayyadurai on behalf  
23 of Harder, Your Honor. That's absurd.

24 THE COURT: That is true.

25 MR. GALARDI: You know, I wouldn't have had --

1 I've had these fights for about a month asking him why --  
2 who is he representing, they're making all these comments  
3 for Ayyadurai and Terrill, never objected on behalf of  
4 Ayyadurai and Terrill, and now we're representing Ayyadurai  
5 and Terrill.

6 MR. KOHN: I just think it's unfair to impose on  
7 Ayyadurai and Terrill to retain counsel because Mr. Galardi  
8 wants to put it in an order. Just doesn't make sense.

9 THE COURT: So you think they shouldn't get any  
10 notices --

11 MR. KOHN: No, they should get notice. They  
12 should get notice.

13 MR. GALARDI: Who represents him to say that?  
14 That's --

15 MR. KOHN: And then they'll say, okay, here's  
16 counsel. That's all we're saying.

17 THE COURT: Well it just send it to the settlement  
18 parties, right, didn't say to who.

19 MR. GALARDI: Well we sent it to counsel because  
20 we've had this problem that Harder would not accept it. He  
21 wrote the settlement agreement for them.

22 THE COURT: Well that may be, I mean it could  
23 happen tomorrow --

24 MR. GALARDI: That's fine.

25 THE COURT: -- even if he did represent them

1 today, he could resign or will make a dischargement.

2 MR. GALARDI: And we specifically asked Mr. Harder  
3 if he had any objection for us to serve discovery on  
4 Ayyadurai and Terrill.

5 THE COURT: Why don't we -- why don't you to the  
6 following. Can you communicate directly with Ayyadurai?

7 MR. GALARDI: We asked that question but Harder  
8 would not answer it.

9 THE COURT: All right. Well why don't you -- he  
10 was represented -- they were represented by Mr. Basalio  
11 during the case?

12 MR. GALARDI: For bankruptcy counsel. This is the  
13 sort of run around we've gotten, Your Honor. Listen --

14 THE COURT: Well but the rights were -- did he  
15 represent them in connection with the settlement agreements?

16 MR. GALARDI: No, Mr. Harder did. And Mr. --

17 THE COURT: Let me get it. Does Mr. Harder  
18 represent them there?

19 MR. KOHN: No, not --

20 THE COURT: Okay. It sounds like -- it sounds to  
21 me like they're unrepresented. So send them an email saying  
22 who do you want us to send notice to --

23 MR. GALARDI: That's fine.

24 THE COURT: -- in the event somebody wants to take  
25 a deposition that might implicate your rights under the

1 settlement agreement.

2 MR. GALARDI: And that's all we had asked  
3 Mr. Harder to do and you've gotten the answer.

4 THE COURT: Just say notice to the settlement  
5 parties.

6 MR. GALARDI: That's fine, Your Honor.

7 THE COURT: And you can figure out who to --

8 MR. GALARDI: That's fine, Your Honor. I am  
9 hopeful that we could send that order over to Your Honor  
10 this afternoon or the first thing tomorrow.

11 THE COURT: Well make sure that the other parties  
12 see it. Send it to me this afternoon, you have by tomorrow  
13 to file --

14 MR. GALARDI: Thank you.

15 THE COURT: And just a minute, before anybody goes  
16 anywhere.

17 MR. KOHN: Your Honor, I'm traveling, I'm on a  
18 flight to Palm Springs at the ADI conference all afternoon.  
19 I'll be arriving at 11:30 tonight.

20 THE COURT: Okay. It's easy then. You -- no,  
21 listen. You send the proposed order today, give you until  
22 tomorrow, since this is going on and time is not an element,  
23 I'll give you until tomorrow, 5 o'clock. So you'll be in  
24 Palm Springs to file any objections, which you can do by  
25 email, if necessary, and send it to my chambers, and then

1 I'll just prepare an order and enter it.

2 Yes, sir?

3 MR. TABAK: Good morning, Your Honor.

4 THE COURT: How come you're sitting on that side  
5 of the table? Actually your interests are adverse to them.

6 MR. TABAK: Well my interests in terms of the  
7 discovery with regards to Mr. Bollea and the discovery bar  
8 on his order --

9 THE COURT: Okay.

10 MR. TABAK: -- are on this side. I should sit in  
11 the middle. Yes, thank you.

12 Daniel Tabak from Cohen & Gresser on behalf of  
13 Mr. Bollea.

14 And I am sitting in the middle sort of  
15 figuratively and literally at some points, and it's  
16 particularly with the sale issue and Mr. Thiel's desire to  
17 be part of that.

18 What the plan administrator says in his papers is  
19 he would want scorched earth discovery and evidentiary  
20 hearings in order to allow Mr. Thiel into the sale process  
21 is one of the alternatives.

22 What the plan administrator said in the press  
23 yesterday was that he's considering allowing Mr. Thiel into  
24 the process, though as I read it not as a stalking horse  
25 bidder.

1           What I -- throughout the course of these  
2 bankruptcies I've been able to negotiate settlements for  
3 Mr. Bollea with the Gawker debtors, with Mr. Denton, I was  
4 able to negotiate agreements actually help other creditors  
5 reach agreements with Gawker, I was able to help Mr. Thiel  
6 reach an agreement with Mr. Denton. The nut that I cannot  
7 seem to crack, which we've seen with this proposed form of  
8 order and we see with the sale, is that I can't seem to get  
9 these two folks to reach agreement.

10           And I think it may be premature, but it may be  
11 that we would respectfully appreciate Your Honor's guidance  
12 in helping to avoid I think scorched earth discovery when it  
13 seems as though there may be an agreement that could be  
14 reached, but I can't get them to get there.

15           THE COURT: An agreement on the sale or an  
16 agreement -- a settlement agreement between Thiel and the  
17 Gawker estate?

18           MR. TABAK: I would say either, but at this point  
19 on the sale. I think it seems to me from what I've read in  
20 the press that there may be enough common ground that we can  
21 avoid scorched earth litigation about this.

22           THE COURT: Well Mr. Thiel can always make an  
23 offer to settle potential claims. That happens all the  
24 time. Does he want to -- I don't know if you can answer  
25 this -- but if he could settle those claims does he have any

1 interest in buying the Gawker website?

2 MR. CLARK: I doubt very much that Mr. Thiel would  
3 settle any claims at this point, although Mr. Thiel has  
4 indicated, we've indicated to the administrator and his  
5 counsel, that we are prepared to bid and we think we would  
6 be likely the highest and best bidder for all of the  
7 remaining Gawker assets, including the claims, and accepting  
8 only cash available for distribution under the plan.

9 THE COURT: Okay. So why don't you just make him  
10 an offer?

11 MR. CLARK: We've been trying to do that, Your  
12 Honor, we've been stiff armed all the way.

13 THE COURT: Send him a letter with an offer. You  
14 want to mediate this dispute?

15 MR. CLARK: I'll make an offer right now. We'll  
16 pay him \$50 for everything. There's an offer.

17 THE COURT: I think he can summarily reject it.

18 MR. CLARK: But that's the whole point, Your  
19 Honor.

20 THE COURT: All right. Let me respond to what  
21 Mr. Tabak has raised. Mr. Bollea is a party in interest in  
22 the case, he's got standing. First of all if there's any  
23 proposed sale he has standing to object to the proposal.  
24 Mr. Thiel may have standing to object to the process, if  
25 he's a bidder, I think he probably has standing to do that

1 much.

2 Right now there's no sale, it's not before me, and  
3 there's really nothing for me to decide. I would think  
4 that, you know, on the one hand the debtor obviously wants  
5 to maximize whatever is in the estate since it'll flow to  
6 equity, or most of it, on the other hand there's a certain  
7 level of distrust in this case.

8 MR. CLARK: That's exactly the problem, Your  
9 Honor. And so we could make a motion --

10 THE COURT: So what's the resolution now that we  
11 know the problem?

12 MR. CLARK: The resolution I think would be some  
13 assistance from the Court with the administrator to persuade  
14 him to that he ought to open up to process sufficient to  
15 allow any bidder to bid on a level playing field.

16 We don't need access to any due diligence about  
17 claims they may have against us, but there are other assets  
18 that based on what I have heard they are allowing diligence  
19 to other bidders under NDAs. We've offered to sign an NDA  
20 and they won't even give us a form of NDA. There's just --  
21 there's no way for us to get into the process.

22 THE COURT: You know you say that Mr. Clark but  
23 then you make a \$50 offer. And I know it was a joke, but it  
24 seems to me, and you don't have to make it in open court,  
25 you can say this is what we'll pay for the claims as long as

1 we get everything else, because I don't know what everything  
2 else is worth at this point. I assume that the Gawker  
3 website may have some value, just to me, I don't know.

4 MR. CLARK: We don't even know what the everything  
5 else is because they won't let us in to tell us.

6 So yeah, we can make a blind offer, and the \$50  
7 was a joke, but only a half of a joke, Your Honor. We'll --  
8 we can make an offer, we can put a number out there, it's  
9 going to be meaningless, but we can do that if that'll open  
10 up to door to allow us to participate in the process like  
11 any other bidder. And after all the whole process is  
12 supposed to be about maximizing value And here you got  
13 somebody who's got real money banging on the door being told  
14 to go away.

15 THE COURT: Well what's the problem with allowing  
16 anyone to bid?

17 MR. GALARDI: Your Honor, first of all --

18 THE COURT: I take it the assets are up for sale.

19 MR. GALARDI: Your Honor, there's a few things,  
20 and one, I understand that they would like Your Honor to  
21 give advice and to suggest --

22 THE COURT: Fortunately I'm out of that business.

23 MR. GALARDI: Well and that's partly why I  
24 respond, one is. But look, this is a man who we believe has  
25 tried to destroy the business. To allow him to come into

1 the process at that particular time to potentially be a  
2 stalking horse can be detrimental to the process. That's  
3 the judgment that the plan administrator is entitled to  
4 make. It's just that simple.

5 THE COURT: Uh-huh.

6 MR. GALARDI: Mr. Clark constantly keeps saying,  
7 and you've seen the emails, we think the claims are  
8 spurious, I'll throw \$50 on it. Okay. But then you've got  
9 the billionaire behind it that's going to -- that can easily  
10 chill bidding. That's exactly why at this particular time  
11 there's simply no reason that we have to let Mr. Thiel in.

12 MR. CLARK: Your Honor, I've heard this before  
13 about Mr. Thiel somehow chilling the bidding. Mr. Thiel  
14 obviously has very substantial resources. Mr. Thiel has  
15 said he's prepared to compete with anybody on a level  
16 playing field to buy the assets. How does that depress  
17 value here? I don't get it.

18 THE COURT: You know, first of all it's premature.  
19 Secondly, you've stood before me in other cases and argued  
20 about deference to the judgment of the decision makers.

21 MR. CLARK: I was wrong.

22 (Laughter)

23 MR. CLARK: I get it, Your Honor.

24 THE COURT: My reaction is, if the plan  
25 administrator thinks in good faith that it's not a good idea

1 to allow Thiel to participate in this process I'm hard  
2 pressed to second guess that decision.

3 MR. CLARK: Well as I understand what they've said  
4 so far, maybe they'll go back on this, they're going to come  
5 up with some kind of a stalking horse kind of proposal and  
6 we're going to move from the confidential portion to some  
7 non-confidential portion of a process at which point we'll  
8 at least have a bogey to shoot at and we'll do our best to  
9 bid on an apples to apples basis.

10 THE COURT: Beside the possible courses of action  
11 what's confidential about the remaining assets of Gawker?

12 MR. GALARDI: Excuse me one second.

13 Your Honor, there is nothing that we think is  
14 confidential. I mean there is the achieves, which is still  
15 up, there is the websites, and we can certainly give them a  
16 list of those particular assets.

17 THE COURT: Yeah, you know, I hear you about the  
18 process, I'm not sure that his unwillingness to talk to you  
19 would prevent you from coming in and making a bid for  
20 whatever assets there are, because the only unknown from  
21 what I'm hearing are these causes of action.

22 MR. CLARK: Well that's the first I've heard that,  
23 Your Honor. We -- the way this happened was my --

24 THE COURT: So what information do you need to  
25 make a bid that you say you're not getting?

1 MR. CLARK: What are the assets? What are the  
2 assets? They haven't even told us that. What are the rule?  
3 Is there a contract that you want us to mark up? All the  
4 normal stuff that happens in a level playing field sale  
5 process. You give the bidders the rules, you give them the  
6 form of contract, you tell them what the assets are that are  
7 available, that kind of stuff. What we got was no, goodbye,  
8 hang up the phone.

9 MR. GALARDI: No, Your Honor, if you read the  
10 emails they got make me an offer just like Your Honor said.

11 THE COURT: Well but they wanted -- you know, if  
12 they're going to make an offer, if there's something besides  
13 these causes of action they at least want to know what the  
14 assets are. They're not asking you about revenue that's  
15 generated or anything like that.

16 MR. GALARDI: It's actually on the record because  
17 it was exactly what Univision excluded.

18 THE COURT: Well for all they know you've entered  
19 into new contracts since the sale.

20 MR. GALARDI: Understood.

21 THE COURT: They don't know.

22 MR. GALARDI: And again, Mr. Clark is very good  
23 creeping to get more and more at this point by way of the  
24 process that we're doing. We'll give them the list of  
25 assets, but again, that is -- there's a difference between

1 Thiel as a builder and every other bidder, and that's where  
2 we will be when we get to the process.

3 MR. CLARK: But if Mr. Thiel -- if I could just --  
4 Your Honor, if St. Francis showed up and wanted to bid as  
5 the highest bidder, other than Mr. Thiel, \$1 million for  
6 everything, and Peter Thiel said, I'll pay you \$1.1 million,  
7 I don't see how it makes any difference who's behind that  
8 1.1 as long as it's a bona fide 1.1.

9 THE COURT: Well but then somebody with -- you  
10 might not have standing to object, but somebody with  
11 standing can come in and say no, I shouldn't approve the  
12 \$1 million transaction, the 1.1 million is a higher and  
13 better offer.

14 MR. CLARK: I would agree on the standing point  
15 with respect to --

16 THE COURT: And then they would have to explain to  
17 me why it's better to sell for the million dollars in your  
18 example to St. Francis than to sell for \$1.1 million to  
19 Mr. Thiel. They'd probably have a difficulty convincing me  
20 of that if we're just talking about straight dollars and  
21 everything is going out.

22 MR. CLARK: Exactly.

23 MR. GALARDI: Your Honor, and again, this is  
24 exactly why we --

25 THE COURT: But we're getting ahead of ourselves.

1 MR. GALARDI: Exactly. This is --

2 THE COURT: Why don't you just give him a list of  
3 your assets and a list of your contracts?

4 MR. CLARK: That's a start.

5 THE COURT: Well that may be the end of it though,  
6 I don't know what more you need.

7 MR. CLARK: Well we'll see what he gives us.

8 THE COURT: You're not --

9 MR. CLARK: Your Honor's suggestion is a helpful  
10 one.

11 THE COURT: It's not an operating company, it's --  
12 as I understand it they're not operating. So you don't need  
13 revenue information or things like that. They haven't  
14 operated for over a year.

15 MR. CLARK: I don't know this. I understand what  
16 the public record says.

17 THE COURT: Has the debtor operated? The  
18 remaining debtor.

19 MR. GALARDI: The simple thing is that the  
20 achieves are up, that's all.

21 THE COURT: Well do they get paid, for instance,  
22 advertisement?

23 MR. GALARDI: No, they're not paid advertising,  
24 no.

25 THE COURT: All right. So there's probably no

1 income.

2 MR. CLARK: I've just gotten a thousand percent  
3 more information than I had before I walked into the  
4 courtroom, Your Honor.

5 THE COURT: But you had some information.

6 MR. CLARK: Yeah, I had the information that says  
7 we're not going to tell you anything though. They've now  
8 told us something. And that's helpful. That's helpful.  
9 And we appreciate Your Honor's intersession on that.

10 MR. GALARDI: And, Your Honor, I'll say this  
11 because there's St. Francis and there's Mr. Thiel, and I  
12 understand your said that if it's a straight dollar issue  
13 there may be a difference. This is not a straight dollar  
14 issue. So I just -- I'm reserving rights on the or  
15 otherwise.

16 THE COURT: Well you're asking me to approve an  
17 auction between two non-debtors that may never acquire,  
18 other than that it's speculative.

19 MR. GALARDI: I'm not asking you for anything, I  
20 just don't want the words to come back.

21 MR. CLARK: But you see where we're going, Your  
22 Honor. This is a sale not about dollars, it's about Gawker,  
23 Ethos, and malicious bidders, as they've put it out there.

24 THE COURT: All right.

25 MR. CLARK: Thank you, Your Honor.

1 THE COURT: Well Mr. Bollea has the standing  
2 because he's the creditor, so he in the first instance can  
3 raise these issues.

4 MR. TABAK: Thank you, Your Honor. I think this  
5 has been extraordinarily helpful more than I was able to  
6 achieve between them. I appreciate the use of the Gawker  
7 rules of civil procedure here.

8 MR. GALARDI: And on the Gawker rules Mr. Clark  
9 also does know, they did get the teaser.

10 THE COURT: Pardon?

11 MR. GALARDI: They did get the teaser for the  
12 sale.

13 THE COURT: Okay.

14 MR. CLARK: Great.

15 THE COURT: The hearing is over.

16 MR. TABAK: Thank you, Your Honor.

17 MR. GALARDI: Thank you.

18 THE COURT: Thank you. Have a Merry Christmas or  
19 a Happy Hanukkah or whatever.

20 MR. CLARK: Hopefully we see you before then, Your  
21 Honor, on something else.

22 (Whereupon these proceedings were concluded at 11:14  
23 AM)

24

25

I N D E X

RULINGS

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Motion to Stay Discovery

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Notice of Presentment, Notice of Presentment of  
Order Pursuant to Rule 2004 of the Federal Rules of  
Bankruptcy Procedure Authorizing the Plan  
Administrator to Conduct Discovery Concerning  
Potential Causes of Action and to Establish Discovery  
Response and Dispute Procedures

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

Dawn South

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